

DOCKET SECTION

BEFORE THE

POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 1997

Docket No. R97-1

**DOUGLAS F. CARLSON
COMMENTS ON OPPOSITION
OF UNITED STATES POSTAL SERVICE
TO DOUGLAS F. CARLSON MOTION TO ADMIT
DFC/USPS-T40-XE-1-9 AND LR-DFC-1
INTO EVIDENCE**

November 12, 1997

On October 20, 1997, I filed a motion to admit DFC/USPS-T40-XE-1-9 and LR-DFC-1 into evidence.¹ This cross-examination exhibit and library reference contain *letters from Postal Service and Internal Revenue Service employees explaining the procedures by which the Postal Service processes and delivers mail that has been sent to the IRS and state tax-collection agencies via certified mail, return receipt requested. The letters reveal that the Postal Service uses procedures that are inconsistent with its own regulations and that fail to "deliver the essence of the service that customers believe that they are purchasing."*²

On October 30, 1997, the Postal Service filed an opposition to my motion.³ The Postal Service advances several theories why, in its belief, these letters should not be admitted into evidence. In addition, without citing any statutes, rules, regulations, or

¹ Douglas F. Carlson Motion to Admit DFC/USPS-T40-XE-1-9 and LR-DFC-1 into Evidence ("Motion"), filed October 20, 1997.

² Motion at 2-3.

³ Opposition of United States Postal Service to Douglas F. Carlson Motion to Admit DFC/USPS-T40-XE-1-9 and LR-DFC-1 Into Evidence ("Opposition"), filed October 30, 1997.

case law to support its position (except for a vague reference to the “Commission’s rules of practice and procedure”), the Postal Service suggests that I improperly solicited these letters directly from postal employees, thus failing to “behave in a way that gives effect” to the Postal Service’s representation by legal counsel in this proceeding.⁴ Since the Postal Service, as the proponent of this suggestion, has failed to substantiate its position with a sufficient legal argument, the Commission can and should rule on my motion without reaching a decision on the propriety of the method in which I obtained these letters. In any case, I believe that a response to the Postal Service’s accusation is warranted.

General Discussion

The Postal Service claims that, as an individual intervenor in this case representing myself, I should have directed my inquiries concerning return-receipt service to the Postal Service through its counsel.⁵ This position, in addition to lacking sufficient legal foundation, ignores a key fact: I mailed all my initial letters requesting information about return-receipt service on July 7, 1997, three days prior to the date on which the Postal Service filed its Request for an Opinion and Recommended Decision that initiated Docket No. R97-1.⁶ On July 7, 1997, I did not know the date on which the Postal Service would file its next case. I was not aware whether return-receipt service would be an issue in an upcoming case. I also did not know whether the Postal Service would base a future request for a fee increase for return receipt on the value of the service, thus making information about the level of service relevant. As an individual who sometimes intervenes in Postal Rate Commission proceedings, I reject any suggestion that, outside the scope of a relevant rate case, I lose my right to contact the Postal Service about any matter that may be of interest to me or that may possibly be relevant to a future case. Moreover, I reject any suggestion that information I might obtain or otherwise learn from these inquiries should be barred from admission into

⁴ Opposition at 5.

⁵ *Id.*

⁶ See, e.g., LR-DFC-1 at 4.

evidence in a future case. To restrict my conduct outside the scope of a rate proceeding would be overly broad and would violate my right to due process.

Without directly acknowledging that I initiated my inquiry into return-receipt service prior to the filing of Docket No. R97-1, the Postal Service notes that some of my letters to the Postal Service were dated during the discovery period (August 28, 1997, to be specific).⁷ These letters were follow-up to my July 7, 1997, letters to clarify the initial responses, some of which were unclear or nonresponsive. I believe that my right to follow up on and clarify responses to letters that I mailed prior to the commencement of a rate case is a reasonable extension of my right to contact the Postal Service in any way, about any matter, prior to the filing of a rate case.

Contrary to the Postal Service's suggestion, Mr. Popkin's letters⁸ clearly are not "in the nature of discovery."⁹ Written on April 7, 1997, and May 29, 1997, they inquire into problems with the service that Mr. Popkin received when he mailed his tax returns via certified mail, return receipt requested. As an individual, Mr. Popkin has a right to contact postal employees about problems with the service that he receives — especially when he pays separate fees specifically for that service. As a participant in this case, I have a right to use copies of this relevant correspondence as evidence in this case, as it reveals service problems that result from normal operating procedures at two post offices. This correspondence is not discovery.

In short, although I am aware of no rules governing this issue, *during a Commission proceeding* I believe that I can be reasonably expected to initiate discovery requests through Postal Service counsel when I seek to discover information that may be relevant to that proceeding. I will continue to conform to this practice. However, I reject the Postal Service's suggestion that Mr. Popkin or I acted improperly when we mailed letters directly to postal employees prior to the commencement of this

⁷ Opposition at 5.

⁸ LR-DFC-1 at 2-3 and 9-10.

⁹ Opposition at 5.

proceeding and, in my case, followed up on those letters during the discovery period of this proceeding.

For the reasons that I have explained above, I perceive the Postal Service's position on this issue as a serious threat to my right as a postal customer and an American citizen. Moreover, the Postal Service's suggested rule constitutes an overly broad restriction on my right to due process in Commission proceedings because it apparently would require me to surrender certain rights — such as the right to introduce into Commission proceedings any information or knowledge that I gained outside of formal discovery, regardless of when or how I obtained that information — in return for participating in Commission proceedings.

Failure of Formal Discovery

The Postal Service's opposition to my motion and its suggested rule restricting my actions are even more troubling when one examines the Postal Service's own behavior in responding to my discovery requests concerning this aspect of return-receipt service. In its opposition, the Postal Service suggests that "needless complications" will result if information can be obtained from the Postal Service other than through its legal counsel.¹⁰ The Postal Service also asserts that requiring parties to obtain information from the Postal Service through formal discovery will help to ensure that "the information on which the Commission hopes to rely is as accurate as possible."¹¹ While I agree that parties should attempt to obtain information through formal discovery whenever possible, in this instance the information that I independently obtained on return-receipt service clearly is more reliable than the information that the Postal Service provided through formal discovery. Indeed, the Postal Service's suggestion that I should have proceeded solely through formal discovery highlights the Postal Service's own failure to provide an accurate record.

¹⁰ *Id.*

¹¹ *Id.* at 5-6.

Specifically, on September 18, 1997, I filed three interrogatories asking witness Plunkett to confirm the existence of situations that, based on the letters from postal employees that are at issue, I knew to exist for delivery of return-receipt mail to IRS offices.¹² In my instructions for these interrogatories, I wrote, "If the witness is unable to provide a complete, responsive answer to a question, I request that the witness redirect the question to a witness who can provide a complete, responsive answer. In the alternative, I request that the question be redirected to the Postal Service for an institutional response."¹³ The interrogatories were not redirected, and witness Plunkett answered each interrogatory by stating, "I am not aware of any instances of this kind."¹⁴ This response, which represented the official Postal Service response to these interrogatories, was false.

The Postal Service's provision of a false answer in Commission proceedings is troubling. In addition, assuming that a false answer was not provided intentionally, equally troubling is the minimal amount of effort that the Postal Service apparently expended in responding to this interrogatory. Witness Plunkett acknowledged during oral cross-examination¹⁵ that he was aware of an August 1, 1996, memo to district managers from Sandra D. Curran, acting manager, Delivery,¹⁶ in which Ms. Curran responded to an "increased number of complaints from customers regarding incorrect handling of return receipts by delivery personnel" and requested that district managers take a "proactive approach" to resolving the problem.¹⁷ Specifically, she advised district managers to "Review current delivery arrangements with large volume delivery points, including government agencies, regarding practices such as handing over accountable mail to be signed for at a 'later', more convenient time." If witness Plunkett did not have personal knowledge of the facts necessary to answer my interrogatories, at minimum he should have contacted Ms. Curran for information on the source of the

¹² DFC/USPS-T40-16-18.

¹³ DFC/USPS-T40-16-22, filed September 18, 1997..

¹⁴ Response to DFC/USPS-T40-16-18, filed September 30, 1997.

¹⁵ Tr. 3/1019.

¹⁶ Docket No. MC96-3, Tr. 4/1306-07 (Attachment 1 to Response to DBP/USPS-T1-3).

¹⁷ Docket No. MC96-3, Tr. 4/1306.

information that she related in her August 1, 1996, letter. Ms. Curran surely could have answered witness Plunkett's inquiry or provided a solid lead in the right direction. If witness Plunkett was not aware of this letter on the date on which he answered this interrogatory, Postal Service counsel should have spotted this insufficient investigation and prevented this response from being filed without redirection or further investigation, since Ms. Curran's letter played a prominent role in Docket No. MC96-3 and counsel was familiar with it; in fact, the Postal Service even cited the letter in its initial brief.¹⁸

Instead, the Postal Service chose to provide an answer that it should have known was not reliable. I have provided independently obtained evidence that casts doubt on the credibility of the Postal Service's responses to my formal discovery. The Postal Service now apparently suggests that "fairness and due process" require that the Postal Service's false answer stand unchallenged and that no party may independently investigate any issue — even prior to the commencement of a Commission proceeding — and introduce into evidence the results of that investigation to impeach the Postal Service's discovery responses. In reality, far from a violation of due process, we have here an example of the danger that the Postal Service runs when, to the detriment of customers, it routinely violates its own regulations and then denies the existence of these violations in its responses to formal discovery. Commission procedures should, as the Postal Service notes, support development of an "accurate"¹⁹ record. If I submit testimony in this case, I will not expect to be able to *claim one thing and do another and not run the risk of having this contradiction discovered*. Moreover, the Postal Service surely would not support a rule that prohibited it from investigating the truthfulness of my testimony.

It strains credulity to believe that I could have obtained honest, candid answers — or any answers at all — about the procedures for processing mail destined to the IRS in Memphis or Philadelphia if I had attempted to obtain this information through formal discovery. In Docket No. MC96-3, when I first became aware of this problem

¹⁸ Docket No. MC96-3, Postal Service Initial Brief at 92, filed January 14, 1997.

¹⁹ Opposition at 6.

with return-receipt mail and began to explore the issue, the Postal Service blocked my attempt to obtain information. First, the Postal Service's response to my request for admission²⁰ on this subject was, as the presiding officer noted, "inconsistent" with the material attached to the Postal Service's earlier response to DBP/USPS-T1-3 (i.e., Ms. Curran's letter).²¹ Second, the Postal Service objected to my follow-up interrogatory on the grounds that the information I requested was irrelevant, unduly burdensome to produce, and cumulative (notwithstanding the inconsistent responses to earlier discovery).²² I believe that I can quite accurately characterize as low my chance in this case of obtaining through formal discovery the information that I obtained independently — indeed, the Postal Service's initial response to my inquiry denied the existence of the information that I was attempting to discover.

While I perhaps could have filed follow-up interrogatories, even though the original question and response were very clear, each time I file a follow-up interrogatory or respond to an objection I must spend a *minimum* of \$15 in postage and \$3 in photocopying to serve other parties; any document longer than two pages imposes an even greater photocopying (and possibly postage) expense. Thus, if the Postal Service carelessly or intentionally fails to provide a complete answer to all parts of an interrogatory, the cost of follow-up is at least \$18. If I must serve all parties, the postage cost begins at \$35 for each one-ounce filing. When assessing the rights and obligations of individuals who participate in rate proceedings, the Commission should consider these burdens that parties face.

Conclusion

In closing, I believe that I did not act improperly in contacting postal employees prior to the commencement of this proceeding to obtain information. However, I

²⁰ Docket No. MC96-3, Response to Douglas F. Carlson Request for Admission No. 3, filed October 25, 1996.

²¹ POR MC96-3/36 at 3, filed December 27, 1996.

²² Docket No. MC96-3, Objection of United States Postal Service to Interrogatories of Douglas F. Carlson (filed November 25, 1996) at 4-5. This objection was sustained on the grounds that my interrogatory was not timely. POR MC96-3/36.

nevertheless urge the Commission to rule on my motion without reaching a decision on the rights of individual intervenors to contact postal employees because the Postal Service has provided insufficient legal foundation to support its position; thus, for this reason alone, the Commission should disregard this issue as a basis for the Postal Service's opposition to my motion. If the Commission decides that a ruling governing the rights of individual intervenors to contact postal employees is necessary at this time, the Commission should issue a Notice of Inquiry and provide an opportunity for all participants to submit comments and legal briefs on this issue, as a decision possibly restricting the rights of individuals should be considered very carefully.

Respectfully submitted,

Dated: November 12, 1997



DOUGLAS F. CARLSON

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the required participants of record in accordance with section 12 of the *Rules of Practice* and section 3(B) of the *Special Rules of Practice*.



DOUGLAS F. CARLSON

November 12, 1997
Emeryville, California